Endicott Forging & Manufacturing, Inc. *and* International Brotherhood of Boilermakers, Iron Ship Builders & Helpers, AFL–CIO, Local Union No. 1101. Case 3–CA–19024

September 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed by the Union on December 7, 1994, and an amended charge filed on January 19, 1995, the General Counsel issued a complaint on January 31, 1995, against Endicott Forging & Manufacturing, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

The complaint alleges, and the Respondent admits, that since on or about May 1, 1994, the Respondent has failed to provide medical and dental insurance coverage as required by its collective-bargaining agreement with the Union. The complaint further alleges, and the Respondent admits, that since on or about March 1, 1994, the Respondent has failed to pay medical claims under a program of self-insurance as represented to and agreed to by the Union. The complaint also alleges that since on or about November 11, 1994, the Respondent has failed to provide the Union with information regarding the payment or nonpayment by the Respondent of medical bills submitted by unit employees. The Respondent's answer admits that it delayed providing any information until May 19, 1995, and that the information provided at that time was incomplete.

Although the Respondent essentially admits in its answer the operative facts giving rise to the unfair labor practices, it attempts to explain why it failed to meet its contractual obligations to employees represented by the Union. The Respondent asserts that it has suffered financial declines which have impaired its ability to meet its insurance obligations, but that it intends to fully meet its obligations when it is financially able. The Respondent claims that as of April 10, 1995, it arranged for insurance coverage and that it is in the process of completing payment of medical bills submitted by unit employees under a program of self-insurance. The Respondent claims that on May 19, 1995, it provided to the Union a list of unit employees' medical bills, as requested, that it intends to update the list when time permits, and that its delay in providing the requested information was caused by reduced staffing and demands of managing the business which had not permitted performance of the necessary analysis.

On July 28, 1995, the General Counsel filed a ''Motion to Transfer Proceeding to Board, to Strike Respondent's Affirmative Defense and for Summary Judgment and Issuance of Board's Decision and Order.'' The General Counsel asserts, inter alia, that the Respondent's answer essentially admits all the allegations of the complaint and raises no material issues of fact warranting a hearing and that the Respondent's affirmative defenses, even if proven, would not constitute an adequate defense to the allegations in the complaint. On August 2, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent admits its failure to pay medical claims under a program of self-insurance and its failure to provide medical and dental insurance coverage for unit employees as required by its collective-bargaining agreement with the Union. The Respondent's defense is one of economic necessity. It is well established that Section 8(a)(5) and (1) of the Act prohibits an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment of that agreement without obtaining the consent of the Union. *Kane Systems Corp.*, 315 NLRB 355 (1994); *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989). Here, the Respondent has admitted that it breached its collective-bargaining agreement with the Union without having the Union's consent. The Respondent has also admitted that it did not adhere to its agreement with the Union to provide a program of self-insurance.

In its answer, the Respondent also admits that it failed, in a timely fashion, to provide the Union with information regarding the Respondent's payment or nonpayment of medical bills submitted by unit employees. The Union requested the information on or about November 11, 1994, and the Respondent provided a portion of it on or about May 19, 1995, a delay of some 7 months. It is well settled that information regarding insurance is relevant and necessary to a union's performance of its duties as bargaining agent and that this information, when requested, must be provided on a timely basis. *Seiler Tank Truck Service*, 307 NLRB 1090, 1101 (1992). The Respondent has admitted that it failed to provide the pertinent information in a complete and timely fashion.

The Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the complaint. An employer's claim that it is financially unable to pay for contractually required benefits,

''even if proven, does not constitute an adequate defense to an allegation that an employer has unlawfully failed to abide by provisions of a collective-bargaining agreement.'' *Zimmerman Painting & Decorating*, 302 NLRB 856, 857 (1991). Equally without merit is the Respondent's defense that the demands of its business precluded it from timely furnishing the requested information. It is well established that an employer must apply no lesser degree of ''diligence and promptness'' in collective-bargaining matters than it brings to ''other business affairs of importance.'' *J. H. Rutter-Rex Mfg. Co.*, 86 NLRB 470, 506 (1949). Therefore, the Respondent's answer to these complaint allegations has raised no issues warranting a hearing.

In the absence of any material issues warranting a hearing, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with its principal office and place of business located in Endicott, New York, is engaged in the manufacture and sale of metal forging. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $50,000, and purchased and received goods and materials valued in excess of $50,000, which were shipped to its Endicott facility directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees in production and maintenance (but excluding the die department, office, clerical employees, and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective-bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

Since about 1944, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as the representative by the Respondent. Such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which had a term of May 19, 1994, to May 20, 1995. At all times since 1944, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

B. *The Refusal to Bargain*

Since on or about May 1, 1994, and continuing thereafter, the Respondent has failed to continue in effect the terms and conditions of the collective-bargaining agreement described above by failing to provide medical and dental insurance coverage as required by its collective-bargaining agreement with the Union. Since on or about March 1, 1994, and continuing thereafter, the Respondent has failed to pay medical claims under a program of self-insurance as represented to and agreed to by the Union. The Respondent engaged in the above-described conduct without the Union's consent. Indeed, it was not until on or about November 1, 1994, that the Union was put on notice that the Respondent had been delinquent in paying medical claims under the program of self-insurance, and in making timely health insurance contributions and providing health insurance coverage. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.[2]

Since on or about November 11, 1994, the Union has requested a list of medical bills submitted by unit employees and designation of the payment or nonpayment and related documentation concerning the status of payment of such bills, for a relevant period. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. The Respondent has failed and refused to provide this information completely and without unreasonable delay.

By the above-described conduct, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) and in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

By failing since on or about May 1, 1994, to abide by the terms of the collective-bargaining agreement be-

[1] Because we find the Respondent's affirmative defenses to be inadequate, we also grant the General Counsel's motion to strike. *Nick Robilotto*, supra, 292 NLRB at 1280.

[2] See, e.g., *Enertech Electrical*, 309 NLRB 896, 897 (1992).

tween the Respondent and the Union by failing to provide medical and dental insurance coverage, and by failing, since on or about March 1, 1994, to pay medical claims under a program of self-insurance agreed to by the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

By failing since on or about November 11, 1994, to timely provide the Union with all the insurance information requested by it that is relevant to its duties as collective-bargaining representative, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that the Respondent cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide contractually required medical and dental insurance coverage for its unit employees and by failing to pay medical claims under a program of self-insurance agreed to by the Union, we shall order the Respondent to restore the employees' medical and dental insurance coverage and make the employees whole by reimbursing them for any losses or expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has violated Section 8(a)(5) and (1) by failing to timely provide all relevant insurance information to the Union, we shall order the Respondent to completely and without delay provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Endicott Forging & Manufacturing, Inc., Endicott, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing and refusing to provide contractually required medical and dental insurance coverage and by failing and refusing to pay medical claims under a program of self-insurance agreed to by the Respondent and the Union.

(b) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing and refusing to timely provide the Union with complete information regarding the payment or nonpayment of medical bills submitted by unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the employees' medical and dental insurance coverage and make employees whole by reimbursing them for any losses or expenses they may have incurred during the period that the Respondent failed to provide contractually required medical and dental insurance coverage or failed to pay medical claims under a program of self-insurance, in the manner set forth in the remedy section of this decision.

(b) Provide the Union, in a complete and timely fashion, with any information it has failed to provide regarding the payment or nonpayment of medical expenses submitted by unit employees.

(c) On request, bargain with International Brotherhood of Boilermakers, Iron Ship Builders & Helpers, AFL–CIO, Local Union No. 1101, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees in production and maintenance (but excluding the die department, office, clerical employees and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective-bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Endicott, New York, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER COHEN, dissenting in part.

I would not grant summary judgment as to the alleged delay in furnishing information. Respondent asserts that it provided information to the Union on May 19, 1995, and alleges that reduced staffing and other business demands precluded an earlier response. Respondent also promised to update the information as soon as possible. I believe that these assertions raise factual issues which require a hearing.

My colleagues argue that Respondent had the obligation to treat the Union's request no less diligently than it treated other business demands. I agree. However, there is no showing that Respondent treated other business demands with greater diligence. Again, a hearing would serve to flesh out this inherently factual issue.

In sum, without passing on the ultimate merits, I would not deny Respondent a hearing on these issues.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by failing and refusing to provide contractually required medical and dental insurance coverage and by failing to pay medical claims under a program of self-insurance agreed to by the Union.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees by failing and refusing to timely provide the Union with complete information regarding our payment or nonpayment of medical expenses submitted by unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL restore the employees' medical and dental insurance coverage and we will make them whole by reimbursing employees for any losses or expenses they may have incurred during the period in which we failed to maintain contractually required medical and dental insurance coverage and failed to pay medical claims under a program of self-insurance.

WE WILL provide the Union, in a complete and timely fashion, with any information we have previously failed to provide regarding the payment or nonpayment of medical expenses submitted by unit employees.

WE WILL on request bargain with International Brotherhood of Boilermakers, Iron Ship Builders & Helpers, AFL–CIO, Local Union No. 1101, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees in production and maintenance (but excluding the die department, office, clerical employees, and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective-bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

ENDICOTT FORGING & MANUFACTURING, INC.